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Summary record of the second part (public)* of the 2194th meeting
Held at Headquarters, New York, on Friday, 2 April 2004, at 10 a.m.

Chairperson: Mr. Rivas Posada (Vice-Chairperson)

Contents

Follow-up on Views under the Optional Protocol

Organizational and other matters

Closure of the session

* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.2194.

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In the absence of Mr. Amor, Mr. Rivas Posada, Vice-Chairperson, took the Chair.

The public part of the meeting was called to order at 10.05 a.m.

Follow-up on Views under the Optional Protocol

1. **The Chairperson** drew the Committee's attention to the draft progress report of the Special Rapporteur for follow-up on Views under the Optional Protocol.

2. **Mr. Ando**, speaking as a Special Rapporteur for follow-up on Views under the Optional Protocol, noted that his report covered the period from 1 March 2001 to 26 March 2004. As a result of the Committee's Views, death sentences had in some cases been reduced to life imprisonment or to a sentence of 20 years, indicating the success of the Committee's work regarding individual communications. There had been many cases in which States had provided no response to the Committee's Views, and those cases, in turn, came under several headings. Those in which it had been necessary simply to send a reminder were not problematical. Wherever the Committee required a further update on the situation, he had tried to meet with representatives of State parties. Very often they would send a request to their home Government, but that did not necessarily mean that the response would be forthcoming in time for the Committee's following session. At times State parties disagreed with the Committee's Views and requested a reconsideration. Since the Committee had never reconsidered its Views, he always told the State party that there was no precedent for reconsideration unless the author contacted the Committee with new information. He would welcome guidance from Committee members concerning how to deal appropriately with such cases. State parties had complied with the Committee's Views in roughly one-third of cases. In some cases, State parties had clearly indicated that they had no intention of implementing the Committee's Views, sometimes stating that the Views had the force of recommendations only. In that regard, too, he would welcome guidance from Committee members.

3. **Mr. Scheinin** said that, with regard to reconsideration, if the State party complained that the Committee was mistaken as to the facts, the answer should be that the Committee's decision was made only on the basis of the facts provided by the parties. The Special Rapporteur for follow-up on Views under the Optional Protocol could discuss with the State party and with the Committee the possible effect of the corrected facts with respect to the remedy, but the Views would stand nonetheless. If, on the other hand, the State party was contesting the interpretation of the law, the Special Rapporteur should stand firm, since the interpretation had been arrived at through an adversarial proceeding between the parties. However, he might suggest to the State party that it could raise such issues of law in a general way in its next periodic report.

4. In the face of a failure or refusal to implement the Views, it must be admitted that the Committee itself had little power to induce compliance and would need to call for political support from the United Nations and the other States parties to the Protocol. The Organization as a whole should discuss what mechanisms could be developed.

5. The two cases in the progress report in which the State parties had given a clear indication of their intention not to comply, case No. 716/1996 (*Pauger v. Austria*) and case No. 852/1999 (*Borisenko v. Hungary*), should be the subject of further follow-up and should be published in the Committee's next report. In case No. 884/1999 (*Ignatane v. Latvia*) and cases Nos. 839/1998, 840/1998 and 941/1998 involving Sierra Leone, the Special Rapporteur was recommending no further action, saying that the State party in each case had complied with the Committee's recommendations. However, in the Ignatane case, although some amendments had been passed concerning procedural requirements, the Committee's Views had been broader in scope. He understood that Latvia still had language requirements for the right to stand as a candidate in elections, and that issue required further discussion with the State party. With regard to the cases in Sierra Leone, although the six surviving authors had been released, there was no information as to whether the families of the 12 who had been executed had been compensated. In case No. 1077/2002 (*Carpo v. Philippines*), since the author was still on death row, the Committee should have a meeting with the State party rather than merely sending a reminder. Although the author in case No. 1096/2002 (*Kurbanov v. Tajikistan*), also facing the death penalty, had reportedly been pardoned, the Committee's information did not come from the State party itself, which should be asked to respond directly.

6. **Mr. Solari Yrigoyen** said that the principle should be made clear that there was no procedure for reconsideration of the Committee's Views except in case of obvious error. In case No. 701/1996 (*Gómez Vásquez v. Spain*), the Committee's firmness had ultimately led the State party to change its legislation. With regard to case No. 848/1999 (*Rodríguez Orejuela v. Colombia*) and case No. 859/1999 (*Jiménez Vaca v. Colombia*), he found it odd that the State party was awaiting the Committee's response before implementing the Views. He recalled that in the consideration of the State party's report concerns had been expressed about the Committee of Ministers that had the power to recommend whether or not to implement the Committee's Views. In case No. 633/1995 (*Gauthier v. Canada*) it appeared that the State party had not complied with the Committee's Views. He agreed that such cases should be mentioned in the Committee's report.

7. **Mr. Bhagwati** suggested that in the next report a table could be appended showing which States had complied, complied partly, failed to comply or refused to comply with the Committee's Views.

8. **Mr. Wieruszewski** said that he endorsed Mr. Scheinin's proposal on mustering political support when a State party refused to comply. The topic could be discussed at the meeting of States parties in the autumn and elsewhere. With regard to case No. 1096/2002 (*Kurbanov v. Tajikistan*), a pardon alone was not sufficient compliance with the Committee's Views, so that further follow-up was needed. With regard to case No. 899/1999 (*Francis et al. v. Trinidad and Tobago*), he wondered whether the Special Rapporteur was still contemplating the idea of follow-up missions to other States parties, and if so, which ones. In general, follow-up on Views was clearly a very useful procedure.

9. **Ms. Chanet** said that, on the question of reconsideration, she did not agree with Mr. Scheinin's distinction between interpretation of fact and law. The Committee had no review procedure and could not reconsider, unless perhaps a glaring error had been made with regard to the facts, something that had not yet occurred insofar as she could remember. A State party's refusal to comply should not put an end to follow-up, because that would merely encourage non-compliance. She supported the suggestion of including a table in the report showing the cases still under follow-up.

10. In case No. 799/1997 (*Äärelä et al. v. Finland*), she thought that further follow-up was needed, as the State party had so far only complied with a small portion of the Committee's recommendations. There were States parties that were very good at giving the impression that they were complying, whereas they were actually evading the issue or making excuses, and the Committee should not let itself be deceived.

11. More political support was necessary, true, but the Committee could strengthen the legal basis for compliance with its Views by drafting a general comment on the good-faith application of the Optional Protocol in conjunction with article 2 of the Covenant. Although the Committee's Views were not court decisions, they were more than simple opinions.

12. **Mr. Shearer** said that he agreed with Mr. Scheinin's proposals. With reference to case No. 694/1996 (*Waldman v. Canada*), a further meeting with the State party would be pointless and counterproductive, since the case involved a constitutional issue beyond the power of the federal Government of Canada to resolve.

13. **Ms. Wedgwood** said that, where there was repeated failure to comply, the Committee was entitled to make the matter public. However, its annual report was not news. A press release drafted in an objective and non-provocative way and issued in "real time" might have greater impact.

14. With regard to the question of reconsideration, there was always the possibility of error. Sometimes the Committee took new directions, so that even serious States parties might feel entitled to argue a point. There was no court in the world that did not in some manner respond to requests for reconsideration. It might add to the Committee's credibility if it instituted a summary procedure for review, handled expeditiously.

15. **Sir Nigel Rodley** said that there was rarely a problem of fact. Most of the challenges had been to law. If a review procedure was instituted, it would have to be considered whether it should not be open to both parties and not just to the State party.

16. **The Chairperson** said that the issue deserved in-depth consideration at some future time specifically set aside for it.

17. **Mr. Ando** said that he would try to put the Committee's suggestions into practice wherever

possible. The publication of a list in the Committee's report for the year could be easily done.

Organizational and other matters (*continued*)

Extra week of plenary meetings during the eighty-first session

18. **Mr. Schmidt** (Secretary of the Committee), reporting on budgetary implications under rule 27 of the Committee's rules of procedure, said that there was a proposal that the meetings scheduled for the pre-sessional working group during the week of 5 to 9 July 2004 should instead be transformed into plenary meetings of the Committee in view of its heavy workload of communications under the Optional Protocol. The Committee would then meet from 5 to 30 July 2004. The change would entail an additional $12,500 for travel costs. No such provision had been made in the budget, but it was calculated that the additional costs could be absorbed within the overall resources included under section 24 (Human rights) of the programme budget for the biennium 2004-2005. If the Committee did not require summary records for the meetings during the additional week, there would be no additional conference-servicing costs. If summary records were required, there would be additional conference-servicing costs of $104,700 under section 2 (General Assembly affairs and conference services) of the programme budget for the biennium 2004-2005, which could not be absorbed and would require an additional appropriation by the General Assembly.

19. **Sir Nigel Rodley** said that, as he understood it, the extra week would be devoted solely to the consideration of communications in closed meetings, and he did not believe that the Committee would need summary records for that purpose.

20. **Ms. Chanet** pointed out that, because of the late notice, some members would not be able to attend, and without summary records the question arose how they could find out what had happened during that week.

21. **Mr. Schmidt** (Secretary of the Committee) said that members unable to attend during that week could be provided with the proposed recommendations and a summary of the decisions taken during that week.

Decisions taken by the Bureau during the eightieth session

22. **Mr. Schmidt** (Secretary of the Committee) said that during the eightieth session, the Bureau had decided that the next general comment to be taken up would be the revision of the current General Comment No. 13 on article 14; Mr. Kälin would serve as Rapporteur. All contributors had returned corrected proofs for the Festschrift commemorating the twenty-fifth anniversary of the adoption of the Covenant, which could be out in print by the opening of the Committee's eighty-first session. A proposal for requesting special ad hoc reports from States parties that were overdue in reporting and were known to have derogated from their Covenant obligations would be considered at the eighty-first session. The Bureau had considered ways of cooperating with the Counter-Terrorism Committee. The Chairman of that Committee had said that he would like to address the Human Rights Committee himself, and a meeting for that purpose had been scheduled during the eighty-first session. The Bureau had considered the desirability of revising the Committee's working methods to expedite consideration of concluding observations and communications. An informal working group on working methods, consisting of the members of the Bureau and any other interested Committee members, would meet during the eighty-first session and make proposals. Also at the next session, a meeting would be held in preparation for the third meeting with State Parties to the Covenant. Of the States parties reporting during the current session, Colombia, Suriname and Uganda would be asked to submit their next reports by 1 April 2008, Germany and Lithuania by 1 April 2009.

Closure of the session

23. After the customary exchange of courtesies, **the Chairperson** declared that the Human Rights Committee had completed its work for the eightieth session.

The meeting rose at 11.20 a.m.